

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1123

To be argued by
STEVEN LLOYD BARRETT

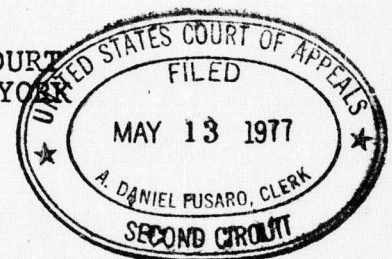
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA, :
:
Plaintiff-Appellee, :
:
-against- :
:
JOSE NUNEZ, :
:
Defendant-Appellant. :
:
-----X

B
AS
Docket No. 77-1123

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
JOSE NUNEZ
FEDERAL DEFENDER SERVICES UNIT
509 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

STEVEN LLOYD BARRETT,
Of Counsel.

PAGINATION AS IN ORIGINAL COPY

Offense ☐ 207 1 District Office Disposition Sentence NUNEZ, JOSE
MAGR. CASE NO. 75 122
18-472 Did possess counterfeit Federal Reserve Notes
U.S. Attorney or Asst. Adlerstein
BEST COPY AVAILABLE
MAGR. CASE NO. 75 122
18-472
Did possess counterfeit Federal Reserve Notes
U.S. Attorney or Asst. Adlerstein
BEST COPY AVAILABLE
MAGR. CASE NO. 75 122
18-472
Did possess counterfeit Federal Reserve Notes
U.S. Attorney or Asst. Adlerstein
BEST COPY AVAILABLE

ARREST 12/2/75 or U.S. Custody Began on Above Charges
INDICTMENT 12-11-75
ARRAIGNMENT 12/19/75
TRIAL 4-30-76
SENTENCE
Disposition
Convicted
Acquitted
Dismissed
Nolo
Guilty
Not Guilty
Guilty
Not Guilty
Guilty
On All Charges
On Lesser Offenses
WOP
WOP
Nolo/Discontinued

Search Warrant	Issued	DATE	INITIAL/No.	INITIAL APPEARANCE	INITIAL/No.	OUTCOME
Summons	Issued			PRELIMINARY EXAMINATION OR REMOVAL HEARING		
Arrest Warrant	Served					
COMPLAINT		12/3/75	MS/070B	Tape No.	INITIAL/No.	
OFFENSE (In Complaint)		Possession of counterfeit currency. T-18 USC Section 472.				

Benito Nunez 2

DATE	PROCEEDINGS
12/3/75	AUSA - E. Levin-Epstein. D.C. LAS - Mr. Asen.
12/11/75	Bail Reduced to \$2,000 Cash. Receipt No. 74113. Money Deposited.
12/12/75	Indictment Filed. See 75 CR 948. (before Judd, J)
12/19/75	Before PLATT, J. - Case called- Deft and counsel present- Emil Rodriguez sworn as interpreter- Defts arraigned and being advised of their rights and on their own behalf enter a plea of not guilty 11 days for all motions- bail cont'd
2-2-76	Motion for severance, ret 2-6-76 at 10 A.M. filed.
2/6/76	Before PLATT, J. - Case called- deft and counsel present- case adjd to 2/17/76 at 2:00 P.M. for trial
2/17/76	Before PLATT, J. - Case called- deft and counsel present- interpreter sworn- case adjd to 4/5/76 : for trial
4-5-76	Before PLATT, J - case called - deft & atty present - Interpreter M. Mensa sworn - adjd to 4-30-76 at 9:30 am for trial.
5/7/76	Before PLATT, J. - Case called- deft present- interpreter sworn- case adjd to 5/21/76 to set trial date
5-21-76	Before PLATT, J - case called - deft & atty present - adjd to May 28, 1976 before Judge Pratt., on consent.

OPPOSITE THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC §3161(h) - "SPEEDY TRIAL ACT".

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY				Filing Unit
		(a)	(b)	(c)	(d)	
7/23/76	Before PRATT, J. - Case called. Coounsel present. Deft waives speedy trial. Adj'd to 11/15/76 at 10:00 a.m. for trial.					A.
11-11-76	Before Pratt, J.- Case Called. Deft. not present. Counsel present. Adj. to 11-13-76 at 9:30 A.M. for trial case.					B.
11-18-76	Before Pratt, J.- Case Called. Deft. present. Michael Asen present for deft. Trial to commence after U.S.A. verses Northanger.					C.
12/2/76	Before PRATT, J. - Case called. Defts and counsel present. Defts waive their rights to move for double jeopardy (as indicated on the Record). Trial ordered and begun. Jurors selected and not sworn. Trial to resume on 12/3/76 at 10:00 a.m. Suppression hearing ordered and begun. Govt rests. Suppression hearing to continue on 12/3/76 at 10:00 a.m.					D.
12-6-76	Before Pratt, J.- Case Called. Deft. & Counsel present. Trial resumed. Trial to continue on 12-7-76 at 10:00 A.M.					E.
12-7-76	Before Pratt, J.- Case Called. Deft. & Counsel present. Trial resumed. Trial continued to 12-8-76 at 9:30 A.M.					F.
12-8-76	Before Pratt, J.- Case Called. Deft. & Counsel present. Trial resumed. Govt. rests. Deft's. motion for a judgment of acquittal is denied. Deft. rests. Govt rests. Deft. renew his motion for a judgment of acquittal - motion denied. Trial to continue on 12-9-76 at 10:00 A.M.					G.
12-10-76	Stenographer's transcripts dtd Dec. 1,2,6,7 & 8, 1976 filed.					H.
12-9-76	Before Pratt, J.- Case Called. Deft. & Counsel present. Trial resumed. Judge charges the jury at 10:00 A.M. Alternate jurors designated and discharged by the court. Marshal sworn. Order of Sustenance signed. Jury returns with a verdict of guilty as charged as to the deft. at 2:00 P.M. (count one of the Indictment) Jurors discharged. Trial concluded. Bail continued as to the deft. Sentence ajd. without date.					I.
12-13-76	Stenographer's Transcript dated December 9, 1976 filed.					J.
12-14-76	Stenographer's Transcript dated Cember 9, 1976 filed.					K.
12-14-76	Voucher for Compensation for Expert Services filed.					L.
2-17-77	Before Pratt, J.- case called - Defendant & counsel present- Defendant sentenced as charged to: imprisonment for a period of 3 years under Title 18, U.S.C. Sec. 3651 on condition that defendant serve in a jail type institution for a period of 6 months. Execution of the remainder of the sentence is suspended and the defendant is placed on probation for a period of 4 years. Probationary period to commence upon the completion of confinement of incarceration. Stay of execution of sentence pending determination of appeal.					M.
2-17-77	Judgment and commitment filed. Certified copies to Marshal, Probation and US Attorney.					N.
2-17-77	Notice of appeal filed. Docket entries and Duplicate Notice of appeal mailed to the C of A.					O.
3.21.77	Order filed received from the Court of Appeals that the record be filed on or before 4.5.77, in default of which the appeal shall be dismissed forthwith.					P.

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

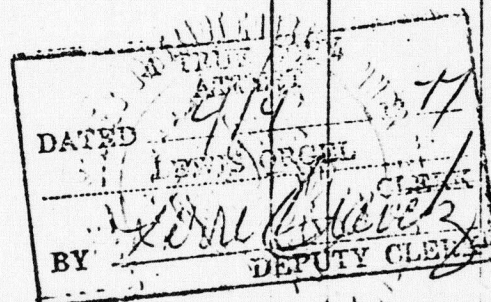
JOSE NUNEZ

75 943

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Yr. Docket No. Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
	(Document No.)	(a)	(b)	(c)	(d)
4/4/77	Stenographers=transcript dated 1/16/76, 5/21/76 ,				
	7/23/76, 11/11/76, and 11/18/76 filed.				



RJD:LAA:sj
F# 753,831

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

- against -

JOSE NUNEZ and
BENITO NUNEZ,

Defendants.

----- X

THE GRAND JURY CHARGES:

On or about the 2nd day of December 1975, within the Eastern District of New York, with intent to defraud, the defendants JOSE NUNEZ and BENITO NUNEZ did knowingly and unlawfully possess approximately six (6) counterfeit Fifty Dollar (\$50.00) Federal Reserve Notes, all bearing Serial No. B3198575A, and ten (10) counterfeit Twenty Dollar (\$20.00) Federal Reserve Notes, five (5) of which bear Serial No. B84905563D, four (4) of which bear Serial No. B95879063D and one (1) of which bears Serial No. B90628006D, the defendants knowing the same to have been counterfeit. (Title 18, United States Code, Section 472.)

A TRUE BILL.

Nicholas Henry

FOREMAN.

David G. Trager

UNITED STATES ATTORNEY
Eastern District of New York

B
FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

DEC 12 1975

TIME AM.....
P.M.....

Cr. No. _____
(T. 18, U.S.C., §472)

75 CR 940

No. _____

UNITED STATES DISTRICT **COURT**
EASTERN *District of* NEW YORK

Division

THE UNITED STATES OF AMERICA

vs.

JOSE NUNEZ and BENITO NUNEZ,

Defendants.

INDICTMENT

(T. 18, U.S.C., §472)

A true bill,

Foreman.

Filed in open court this _____ *day*
of _____, *A. D. 19*_____

Clerk.

*Bail, \$*_____

L.A. Adlerstein

598²⁰¹4346

CHARGE OF THE COURT

THE COURT: Good morning, ladies and gentlemen.

We are now at the stage of the trial where you are about to undertake your final functions as jurors. Your duty is a serious and important one. In performing it you actively share with me the responsibility of administering justice according to law and the evidence in this case. Your oath as jurors obliges you to discharge this final task in an attitude of complete fairness and impartiality and as was emphasized by me when you were selected as jurors, without bias or prejudice for or against the Government or the defendantes as parties to this controversy.

You must not permit yourselves to be governed by sympathy or any other consideration not found in the evidence and in these instructions on the law.

The case is important to the Government since

1
2 the enforcement of the criminal law is of prime
3 importance to the welfare of the community. Obviously,
4 it is equally important to the defendants who are
5 charged with a serious crime and have the right to
6 receive a fundamentally fair trial and the community
7 has an interest in that, too.

8 The fact that the Government is a party
9 entitles it to no greater consideration than that
10 accorded to any other party of a litigation. By the
11 same token it is entitled to no less consideration,
12 the Government and individuals alike, stand as equals
13 before the bar of justice.

14 In this charge I shall describe for you first
15 the general principles amicable to all criminal c
16 trials, then the nature of the charges in this case
17 and then the specific rules of law which are amicable
18 to the charges and, finally, something about how you
19 should reach a verdict.

20 Your final role as to decide and pass upon the
21 fact issues in the case. You are the sole and exclusive
22 judges of the facts. You determine the weight of the
23 evidence. You appraise the credibility of the
24 witnesses. You draw the reasonable inferences from the
25 evidence.

CHARGE OF THE COURT

My function now is to instruct you as to the law. It is your duty to accept these instructions as to the law and to apply them to the facts as you may find them.

With respect to any factual matter it is your recollection and yours alone that governs. Anything that counsel, either for the Government or the defense may have said with respect to matters in evidence, whether during the trial, in a question, in argument or in summation, is not to be substituted for your own recollection of the evidence. So, too, as to any matter in evidence, anything I may have said during the trial or may refer to during the course of these instructions is not to be taken in place of your own recollection. Keep in mind I have no view of the guilt or innocence of these defendants.

The indictment here is merely an accusation, a charge. It is not evidence of the defendants' guilt. Since each defendant has pleaded "not guilty," the Government has the burden of proving the charges against each defendant beyond a reasonable doubt. A defendant does not have to prove his own innocence. On the contrary, each defendant is presumed innocent of the accusations contained in the indictment. This

CHARGE OF THE COURT

1
2 presumption of innocence was never favor at the
3 start of the trial. It continued in his favor through-
4 out the entire trial. It is in his favor even as I
5 instruct you now and it remains in his favor during
6 the course of your deliberations in the jury room.
7 The presumption of innocence is removed only if and
8 when you are satisfied that the Government has sustained
9 its burden of proving a defendant is guilty beyond a
10 reasonable doubt. If the Government has failed to
11 sustain its burden, then the presumption of innocence
12 alone is sufficient to acquit him.

13 I have used the term reasonable doubt. What
14 is reasonable doubt? The words almost define themselves;
15 that there is a doubt founded in reason and arriving
16 out of the evidence in the case or the lack of evidence.
17 It is a doubt which a reasonable person has after
18 weighing carefully all of the evidence. Reasonable
19 doubt is a doubt which appeals to your reason, to
20 your judgment, to your common sense and your experience.
21 It is not caprice, whim, speculation, conjecture or
22 suspicion. It is not an excuse to avoid the performance
23 of an unpleasant duty. It is not sympathy for a defendant.

24 If, after a fair and impartial consideration of
25 all the evidence you can candidly and honestly say you

1
5 2 are not satisfied of the guilt of the defendant; that
3 you do not have an abiding conviction of his guilt,
4 in sum, if you have such a doubt as would because you
5 as prudent persons to hesitate before acting in
6 matters of importance to yourselves, then you have a
7 reasonable doubt and in that circumstance it is your
8 duty to acquit.

9 On the other hand, if, after such an impartial
10 and fair consideration of all of the evidence you can
11 candidly and honestly say you do have an abiding
12 conviction of the defendants' guilt, such a conviction
13 as you would be willing to act upon in important and
14 weighy matters in the personal affairs of your own life,
15 then you have no reasonable doubt and under such
16 circumstances, it is your duty to convict.

17 One final word on this subject. Reasonable
18 doubt does not mean a positive certainty or beyond all
19 possible doubt. If that were true, few persons, however
20 guilty they might be, would be convicted. Since it is
21 practically impossible for a person to be absolutely
22 and completely convinced of any controverted fact, the
23 law in a criminal case is that it is sufficient if the
24 guilt of a defendant is established beyond a reasonable
25 doubt, not beyond all possible doubt. Nor is it the

CHARGE OF THE COURT

1
2 Government's burden to prove each and every bit of
3 evidence to be true beyond a reasonable doubt. Its
4 burden is to prove beyond a reasonable doubt each
5 and every essential element of the crime charged.
6 I will say more about the four elements of this crime
7 in a few moments.

8 Reasonable doubt may arise from the failure of
9 the Government to produce evidence. A defendant is
10 not obligated to present evidence in his own favor.
11 He has the right to rely on the failure by the
12 Government to prove its case. He may also rely on
13 evidence brought out on cross-examination of witnesses
14 called by the Government.

15 On the other hand, a defendant has the power to
16 subpoena anyone in support of his position if he so
17 chooses and he may exercise that power if he chooses.

18 I have used the term "inference." An inference
19 is a conclusion which reason and common sense leads
20 you to draw from the facts which have been established
21 by the evidence in the case. It is always for the
22 jury to draw the inference.

23 Evidence may be either direct or circumstantial.
24 Direct evidence is that which is given of actual or
25 personal knowledge of the fact in question. For

1
7 2 example, one who with his own eyes see a man fire a
3 gun at another man and tells what he saw has given
4 direct evidence of the shooting. In the absence of
5 direct evidence, however, reliance is often placed
6 upon circumstantial evidence which does not tend to
7 establish the fact in question direct, but which does
8 so indirectly by establishing surrounding circumstances
9 from which the fact in question can be inferred. Thus,
10 if our witness to the shooting had not actually been
11 there to see it, but after hearing a shot, arrived
12 moments later, and saw one man holding a smoking gun
13 and the other lying on the ground, his testimony would
14 tend to prove the shooting, but it would be indirect
15 or circumstantial evidence since it would be evidence
16 of surrounding or collateral facts from which the fact
17 in question might be inferred.

18 What is the evidence in this case which you
19 may consider? It consists of the sworn testimony of
20 the witnesses regardless of who called them, consists
21 of the exhibits in evidence regardless of who produced
22 them and it consists of any facts which have been
23 admitted or stipulated.

24 What is not evidence? Statements or arguments
25 of counsel, in opening or summation made during the

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2 trial are not evidence; statements by me are not
3 evidence. Anything that I have directed to be stricken
4 from the record or instructed you to disregard, that
5 is not evidence. Any questions to which an objection
6 has been sustained. You are not to speculate on what
7 answer might have been give had I permitted it to
8 be answered.

9 Each of the defendants here is charged with
10 the crime described in the indictment. You should,
11 therefore, give separate consideration and render a
12 separate verdict with respect to each defendant. Each
13 defendant is entitled to have his guilt or innocence
14 determined from his own conduct and from the evidence
15 which applies to him as if he were being tried alone.
16 Guilt or innocence is an individual matter and when you
17 deliberate upon the verdicts in this case you must
18 determine the guilt or innocence of each defendant
19 separately and individually. You may finder either or
20 both of the defendants guilty or not guilty.

21 We turn now to the indictment. At the outset
22 I want to re-emphasize that an indictment merely states
23 the charge against the defendant. It has no weight
24 as evidence, none at all.

25 The indictment here charges each defendant with

1
2 one offense. It alleges that on or about the second
3 day of December, 1975, within the Eastern District of
4 New York, with intent to defraud, the defendants Jose
5 Nunez and Benito Nunez, did knowingly and unlawfully
6 possess approximately six counterfeit \$50. federal
7 reserve notes, all bearing serial number B 3198575A,
8 and ten counterfeit \$20. federal reserve notes, five
9 of which bear serial number B 84905563D, four of which
10 bear serial number B 95879063D, and one of which bears
11 serial number B 90623906D; the defendants knowing the
12 same to have been counterfeit.

13 Thus, the indictment charges that each defendant
14 violated Section 472 of Title 18 of the United States
15 Code. That section provides in substance, "Whoever
16 with intent to defraud keeps in his possession any
17 counterfeited federal reserve notes, shall be guilty
18 of a crime."

19 (Continued next page)
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SS/ed
LAM-2

CHARGE OF THE COURT

In order to establish that a defendant is guilty of possessing counterfeit money as charged in the indictment, the Government must prove as to him beyond a reasonable doubt each of four essential elements. First, that the federal reserve notes referred to in the indictment were counterfeit.

Second, that he had the notes in his possession.

Third, that at the time of possession, he knew the notes were counterfeit.

Fourth, that he had the counterfeit notes in his possession with the intent of defrauding some person.

As to the first element, that the federal reserve notes, which are Exhibit three in evidence, were counterfeit, you must determine whether the notes are counterfeit on all the evidence, including the testimony of Mr. Brown and your own inspection of the notes which will be given to you when you go into your deliberations.

As to the second element, possession, you may consider any evidence in the case which tends to show that either or both of the defendants had the notes in his possession. In particular, you may recall Allen Miller's testimony that Jose took the money from

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2 his pocket and handed it to Benito who, in turn,
3 handed it to Miller. In order to find either of the
4 defendants guilty, you must find beyond a reasonable
5 doubt that at some time on or about the date in ques-
6 tion he had the allegedly counterfeit money in his
7 possession.

8 As to the third essential element, that the
9 defendant in question knew that the notes were counter-
10 feit while they were in his possession, the Government
11 maintains that each of the defendants had actual
12 knowledge that the notes were counterfeit. The Govern-
13 ment need not prove this element by direct evidence,
14 but it must prove facts and circumstances from which
15 you are able to infer beyond a reasonable doubt that
16 the defendant in question knew that the notes were
17 counterfeit. In that connection, you may consider any
18 statements which the defendant may have made, the
19 appearance of the notes under your own examination and
20 the testimony, if you find it to be credible, about
21 the defendant's dealings with the notes, the manner in
22 which the participants in the dealings dealt with one
23 another and about any prior similar acts which you
24 find that the defendant may have engaged in and which
25 relate to counterfeit money as well as all other

CHARGE OF THE COURT

testimony which you find throws light on the particular defendant's knowledge about the notes.

Again, however, before you may convict either of the defendants, you must find such knowledge separately to exist with respect to him.

The fourth essential element is that the defendant in question possessed the notes with intent to defraud. Intent to defraud means to act willfully and with specific intent to deceive or cheat for the purpose of financial gain. The intent to defraud need not be an intent to defraud the United States. It would be sufficient the defendant intended to defraud a person with whom he was transacting business by placing in the hands of that person a note which was worthless in return for a good consideration.

Here, the Government claims that both defendants intended to defraud Allen Miller by exchanging the allegedly counterfeit notes for the stereo equipment. Here, too, as with the elements of possession and knowledge, in other words to find either of the defendants guilty, you must be convinced beyond a reasonable doubt that he personally had the requisite intent to defraud.

(Continued on next page.)

T 1 am

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SS/bw

THE COURT (Cont'd): The Government must prove every element of the crime charged beyond a reasonable doubt. If the Government fails as to any element you must acquit. The fact that one element of the crime may or may not exist has no bearing upon any other element of the crime charged. You may not infer solely from the existence of one element of the crime, if you conclude that element has been established, the existence of any other element of the crime. If any element of the crime has not been established beyond a reasonable doubt, your verdict must be not guilty. On the other hand, you must convict a defendant if each of the elements of any crime as to him has been proved beyond a reasonable doubt.

The Government has presented evidence which it claims establishes that the defendants engaged in other transactions similar to that charged in the indictment. You must not take this evidence as proof of either of the defendants having a criminal character or criminal disposition and you must remember a defendant may be found guilty only if you find beyond a reasonable doubt that he committed the particular offense charged in this indictment.

You may consider, in determining whether a

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2 defendant acted with guilt knowledge or intent to
3 defraud, the fact, if you find it true, that the
4 defendant engaged in other transactions similar to
5 those charged in the indictment. The fact that one
6 defendant engaged in similar transactions may not be
7 considered in determining the knowledge or intent of
8 the other defendant. A defendant's own similar acts
9 may be considered in determining only his own knowledge
10 and intent, but if you find that the Government has
11 clearly and conclusively established that a defendant
12 performed acts similar to that charged in the indictment,
13 then you may use evidence of those similar acts to
14 help you determine, one, whether that defendant knew
15 the notes were counterfeit and, two, whether he acted
16 with intent to defraud, you may consider the similar
17 acts if you find they occurred as evidence of a
18 defendant's knowledge, motive, intent, plan and the
19 absence of any mistake or accident, but you must not
20 rely upon this evidence of other acts for any other
21 purpose.

22 Remember that the defendants are being tried
23 only with respect to counterfeit money which they
24 allegedly possessed on or about the 2nd of December,
25 1975. It would be improper for you to convict either

1
3 2 of them of a crime not charged in the indictment.

3 Therefore, do not concern yourselves with any possible
4 criminal consequences which the similar acts alleged
5 by the Government might have.

6 Mere association is no crime. There is no such
7 thing under our laws as guilt merely by association.
8 The mere presence of a defendant at or about a place
9 where a crime may have occurred, even coupled with
10 that defendant's knowledge of the fact that such a
11 crime is being committed, is insufficient to establish
12 guilt. In order to convict either defendant you must
13 be convinced beyond a reasonable doubt that he knowingly
14 participated in a criminal venture in an effort to
15 make it succeed.

16 A difficult aspect of any jury's duty is to
17 determine the credibility of the witnesses and to weigh
18 their testimony. You, the jurors, are the sole judges
19 of the credibility of the witnesses. Credibility refers
20 to the believability of their testimony and the weight
21 their testimony deserves. Your determination of the
22 issue of credibility very largely must depend upon the
23 impression a witness made upon you as to whether or not
24 he was telling the truth or giving you an accurate
25 version of what occurred.

CHARGE OF THE COURT

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2 When you walked in the doors of the courtroom
3 and sit in the jury box while the trial is going on,
4 when you are deliberating in the jury room, you have
5 your common sense, your good judgment and experience
6 with you. You decide whether a witness is straight-
7 forward and truthful, whether the witness attempted to
8 conceal anything; whether the witness has a motive to
9 testify falsely; whether there is any reason why the
10 witness might color his testimony. In other words,
11 what you try to do is to size a person up just as you
12 would do in any important matter where you were under-
13 taking to determine whether or not a person is truthful,
14 candid and straightforward.

15 Scrutinize the testimony given and the circum-
16 stances under which each witness testified and every
17 matter in evidence which tends to show whether a witness
18 is worthy of belief. Consider each witness' intelligence,
19 motive, state of mind, his demeanor and manner while
20 on the witness stand, how own ability to observe the
21 matters as to which he testified, whether he shall
22 have impressed you as having an accurate recollection
23 of those matters.

24 Consider the relationship each witness might
25 base to each side of the case, the manner in which

1
5 2 each witness might be effected by the verdict and
3 consider the extent to which, if at all, each witness
4 is either supported or contradicted by other evidence.

5 Evidence that at some other time a witness has
6 said or done something which is inconsistent with the
7 witness' testimony at the trial may be considered by
8 you for the purpose of judging the credibility of the
9 witness. If adopted by the witness, that is, if the
10 witness has admitted before you that he made the
11 prior statement, it may also be used as affirmative
12 evidence in the case. You may also consider the
13 failure of the witness to disclose information on
14 prior occasions when the opportunity to do presented
15 itself as being inconsistent with the witness' testimony
16 at the trial.

17 Where a prior statement is inconsistent is a
18 fact question solely for your determination. You also
19 determine whether the failure of the witness to reveal
20 information prior to his testifying before you, for
21 example, in the reports or statements he may have made,
22 you determine whether that failure is inconsistent
23 with his present testimony.

24 In making that determination you should consider
25 all the facts and circumstances attendant at the time

1
2 of making the prior statement or the omission of the
3 information. In determining whether the prior statement
4 is inconsistent with the testimony given before you,
5 you may take into consideration the nature of the
6 examination here, the purpose of the statement on the
7 prior occasion and you may also take into consideration
8 normal variations in retelling an event in order to
9 determine whether the statements are truly inconsistent
10 or merely a difference in describing an occurrence.
11 It is for you and you alone to determine whether an
12 inconsistency is to a material or immaterial fact and
13 what effect the inconsistencies may have on the
14 witness' credibility.

15 A witness, however, may be inaccurate, contra-
16 dictory or even untruthful in some respect and yet be
17 entirely credible in the essentials of his testimony.
18 The ultimate question for you to decide in passing
19 upon credibility is did the witness tell the truth here
20 before you as to essential matters.

21 If you find that any witness willfully testified
22 falsely as to any material fact you have a right to
23 reject the testimony of that witness in its entirety
24 or you may accept that part or portion which you believe
25 to be credible.

1
7 2 The fact that some Government witnesses were
3 Government employees or police officers does not
4 entitle their testimony to any greater weight or
5 consideration than that afforded to any other witness
6 in the case. You will evaluate their credibility the
7 same way you do that of any other witness.

8 I want to say something about the testimony of
9 Ramon Perez. Defendants argue that he was an informant
10 who was aiding the Government for his own purposes.
11 The Government argues that he merely volunteered in
12 this matter. If you believe that Mr. Perez's statements
13 and actions whether induced by any promises or
14 potential promises benefiting his special interests
15 you should be hesitant to accept without question or
16 doubt the significance of his testimony. As with every
17 witness, in weighing the significance of Perez's
18 testimony, you should examine and scrutinize his interest
19 and motives with respect to the outcome of this case
20 and determine what effect, if any, it may have had
21 upon the truth of what he told you.

22 The law does not compel a defendant in a
23 criminal case to take the stand and testify and no
24 inference of any kind may be drawn from the failure of
25 a defendant to testify. The law never imposes upon a

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3 2 Defendant in a criminal case the burden or duty of
3 calling any witnesses or producing any evidence.

4 A defendant in a criminal case, however, does
5 have the right to testify as a witness. In this case
6 neither defendant did testify. There are many reasons
7 why a defendant may decide not to testify. You may
8 not speculate why either of the defendants did not
9 testify here and you may not draw any inference
10 whatsoever from their failure to take the stand.

11 There has been evidence offered by the
12 Government concerning certain statements or admissions
13 claimed to have been made by the defendants on the
14 day they were arrested. You will recall in this
15 connection the testimony of Agent Vazeris with respect
16 to his interview of Jose Nunez and of Agent Hast with
17 respect to his interview of Benito Nunez. In connection
18 with these statements, if you find they were given, I
19 want to bring three things to your attention.

20 First, evidence as to any oral statement claimed
21 to have been made outside the court should always be
22 considered with caution and weighed with great care.
23 The person making the alleged statement may have been
24 mistaken or may not have expressed clearly the meaning
25 intended or the witness testifying to the alleged

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2 statement may have misunderstood or may have misquoted
3 what was actually said.

4 Second, as I cautioned you during the trial,
5 each defendant's statements may be considered only
6 as evidence against him. It may not be considered
7 by you as evidence against his co-defendant.

8 Finally, all such evidence should be disregarded
9 entirely unless the evidence in the case convinces you
10 beyond a reasonable doubt the statement was knowingly
11 made. A statement is knowingly made if done voluntarily
12 and intentionally and not because of mistake, intent
13 or other innocent reason.

14 In determining whether any statement claimed to
15 have been made by a defendant outside the court, after
16 a crime has been committed, was knowingly made, the
17 jury should consider the age, sex, training, education,
18 occupation and physical and mental condition of the
19 defendant and his treatment while in custody or under
20 interrogation as shown by the evidence in the case.
21 Also, all other circumstances in evidence surrounding
22 the making of the statement including whether before the
23 statement was made the defendant knew or will be told
24 and understood that he was not obligated or required to
25 make the statement claimed to have been made by him;

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2 that any statement which he might make could be used
10 3 against him in court; that he was entitled to the
4 assistance of counsel before making any statement,
5 either orally or in writing and that if he was without
6 money or means to retain counsel of his own choice an
7 attorney would be appointed to advise and represent
8 him free of cost and without obligation.

9 If the evidence in the case does not convince
10 you beyond a reasonable doubt that a statement was
11 made voluntarily and intentionally, you should disregard
12 it entirely. On the other hand, if the evidence in
13 the case does show beyond a reasonable doubt that a
14 statement was in fact voluntarily and intentionally
15 made by a defendant, you may consider it as evidence
16 in the case against the defendant who voluntarily and
17 intentionally made the statement, but I remind you,
18 again, you may not consider the statement as evidence
19 against the other defendant; that is, against the one
20 who did not make the statement.

21 If any facts permit inferences which are
22 equally consistent with guilt than innocence, you may
23 not consider those facts as evidence of guilt, but
24 if you are satisfied from the evidence as a whole that
25 a defendant is guilty beyond a reasonable doubt you

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11 2 should find a verdict of guilty.

3 At certain times in the trial the attorneys
4 have mentioned 3500 material or exhibits beginning
5 with the number 3500. As I indicated to you earlier
6 in the trial, that terms reference to copies of prior
7 statements of its witnesses which the Government is
8 required by law, has supplied to the defense attorneys
9 to use, if they wish, in cross-examining those witnesses.

10 I have sought not to comment on the evidence
11 in any detail or to give any impression as to my own
12 view, if I have one, of the relative weight of the
13 evidence. If I have done so inadvertently, however,
14 I ask you to disregard it entirely because you are the
15 sole judges of the facts.

16 From time to time in the course of the trial
17 objections have been made and rulings on evidence given.
18 Draw no inferences from the comparative frequency of
19 objections from one or the other side or from the
20 comparative record in having objections sustained.
21 Where an objection to a question has been sustained,
22 disregard the question and draw no inferences from its
23 wording about the answer that might have been given.
24 Where an objection is overruled, evidence then received
25 has no special weight just because it was unsuccessfully

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12 2 objected to.

3 Under your oath as jurors you cannot allow a
4 consideration of the sentence which may be imposed
5 upon a defendant, if he is convicted, to enter into
6 your deliberations or to influence your verdict in
7 any way. In the event of a conviction, the duty of
8 imposing sentence rests solely with the Court.

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2 Your duty is to decide the case solely upon the
3 evidence, to weigh the evidence in the case and to
4 determine the guilt or innocence of each defendant
5 solely upon the basis of such evidence and these in-
6 structions.

7 The verdict in each instance must be unanimous.
8 Each of you as jurors is entitled to your own opinion,
9 but each of you should exchange views with your fellow
10 jurors. That is the very purpose of jury deliberation
11 to discuss and to consider the evidence, to listen to
12 the arguments of your fellow jurors, to present your
13 individual views, to consult with one another and to
14 reach an agreement based solely and wholly on the
15 evidence if you can do so without violence to your own
16 individual judgement.

17 Each of you must decide the case for yourself
18 after consideration with your fellow jurors, but you
19 should not hesitate to change an opinion which, after
20 discussion with your fellow jurors, appears to you to
21 be erroneous. However, if after carefully considering
22 all the evidence and the arguments of your fellow
23 jurors, you entertain a conscientious view that differs
24 from others, you are not to yield your judgement
25 simply because you are outnumbered.

2 1
2 Your final vote must reflect your conscientious
3 view as to how the issues should be decided.

4 The charge here is most serious. A just deter-
5 mination of this case is important to the public. It
6 is equally important to these defendants. Under your
7 oath as jurors you must decide this case without fear
8 or favor and solely in accordance with the evidence
9 and the law.

10 If the Government has failed to carry it's
11 burden as to a defendant, your sworn duty is to acquit.
12 If it has carried it's burden as to a defendant, you
13 must not flinch from your sworn duty. You must con-
14 vict.

15 With respect to the exhibits which have been
16 marked in evidence, shortly after you retire for your
17 deliberations, I will send them all into you for your
18 consideration. If you find that you wish to have some
19 of the testimony repeated, you may make the request of
20 the Marshal and I will call you back here into the
21 courtroom. We will locate those portions that you
22 wish to hear read and either I or the court reporter
23 will read them back to you.

24 When you retire to the jury room, your first
25 duty will be to elect your foreman or forelady who will

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2 preside over your deliberations. During your deliber-
3 ations you should assume the attitude of judges of the
4 facts rather than of partisans or advocates. In that
5 way, you will be making a high contribution to the
6 administration of justice.

7 You may find either defendant guilty or not
8 guilty and the verdict in each case must be unanimous.
9 The Marshal will be available outside the jury room
10 to report when you have reached a verdict or to let me
11 know if there are any questions you wish to have
12 answered. When you have reached a verdict and are
13 ready to report, Simply advise the Marshal, but do not
14 disclose to him what your verdict is. I will have
15 your foreman announce it orally back here in the court-
16 room.

17 (Continued on next page.)
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2 THE COURT (Cont'd): There will now be a short
T 1 am 3 recess during which counsel will review the charge with
R 5
SS/bw 4 me to make certain that nothing has been omitted or
5 mis-spoken. Please retire to the jury room but do
6 not discuss the case until I have brought you back
7 here very short time, just once more.

8 (Jury leaves the courtroom)

9 THE COURT: Are there any exceptions or
10 requests that have not already been place on the
11 record?

12 MR. ASEN: -- In the early portion of your Honor's
13 charge you marshalled certain aspects of the evidence
14 in defining the elements of the crime. In certain
15 respects I think what you -- the inference to be drawn
16 is not that your Honor was necessarily taking a
17 position on the evidence, but that there was only one
18 side to their version of the facts. In other words,
19 I don't remember exactly but there was a point at
20 which your Honor said that it is the Government's
21 position that the defendants intended to defraud Allen
22 Miller, so to speak. I would only ask that your Honor
23 balance that statement off with it is the defendant's
24 contention or the defendant Jose Nunez's contention,
25 for example, that he did not intend to defraud;

1 that he won the money at policy and did not know the
2 money was counterfeit. In other words, that has been
3 the position that I have argued. That is the theory
4 of the defense in so far as my client is concerned and
5 it was not reflected as an offsetting theory to the
6 Government's theory so that the jurors are left with
7 the impression there is only one theory in this case.

8 THE COURT: I believe there are two points at
9 which I did that. I did it in order to narrow the
10 focus of the jury's consideration because of the
11 problem of the similar acts. One was the point I
12 wanted to focus upon the transactions where the Govern-
13 ment contended that the defendants had the intent to
14 defraud and I also wanted to focus upon the possession
15 claimed, the only evidence of possession in this case
16 of the bills in question, is the testimony of Miller
17 that Jose took them out of his pocket, counted them,
18 gave them to Benito who counted them and gave them
19 to Miller.

20 MR. ASEN: I'm not objecting to that,
21 necessarily.

22 THE COURT: That is the other point at which I
23 focused upon the specific evidence.

24 MR. TEITLER: I believe that is an uncontroverted
25 fact in the case.

1 MR. ASEN: I'm not objecting to that.

3 2 THE COURT: It may be uncontroverted, but it's
3 still a question of fact.

4 MR. TITLER: Yes, your Honor, but as far as
5 the defense is concerned.

6 THE COURT: There is argument over evidence in
7 the case that on other occasions one or the other
8 or both defendants possessed other counterfeit bills.
9 All I was trying to do was focus that they're being
10 charged with this crime which occurred on this
11 occasion and it's this possession and it's this
12 particular fraudulent transaction, if you will, which
13 the Government is advancing as the basis for its case.

14 MR. ASEN: Right. I'm not rising to object
15 to the marshalling of the evidence in so far as Allen
16 Miller is concerned, but I think that it's clear that
17 the Government is charging that the defendants knew
18 the bills were counterfeit and it's clear that the
19 Government is charging that they intended to defraud
20 in this case, Allen Miller. I think it is repetitious
21 and redundant and gives undue weight to the Government's
22 version of this case for your Honor to use the
23 Government's version exclusively in an example
24 describing that element of the crime of this intent.
25 That is all that I'm saying on that point.

1 THE COURT: The difficulty I have in giving
2 any alternate view is that there is virtually no
3 evidence to support an alternate view.

4 MR. ASEN: I think --

5 THE COURT: This is not a sharp contest of fact
6 here. It's a question of whether or not the Government
7 has met its burden. You have one hearsay statement
8 in the record that he got it at the bank, or from the
9 bank, the new bills. It's the only thing that in any
10 way relates to bolita or gambling or anything else.

11 MR. ASEN: His own statement to Mr. Vezeris
12 is not inconsistent with that. In fact it can be
13 argued the individual that he met in Harlem is the
14 bank. In other words, I think in every statement that
15 my client made --

16 THE COURT: This is the argument you made to
17 the jury.

18 MR. TEITLER: I might say, Judge, Mr. Asen's
19 entire argument to the jury was based not on the
20 evidence in the case, at least in large bulk. I
21 certainly didn't object to it.

22 THE COURT: It's not consistent with the
23 evidence in the case. It was imaginative, let's say.

24 MR. ASEN: Thank you, your Honor.

25 THE COURT: You have made your point for the

1 record, Mr. Asen, but I don't think that I will charge
5 2 as you have requested, to give a supplemental charge
3 as you requested.

4 Any other points?

5 MR. ASEN: I don't recall whether your Honor
6 indicated the jurors must first find that the prior
7 similar acts put in evidence, the Government were
8 in fact similar acts.

9 THE COURT: Yes, I did.

10 MR. ASEN: Then I have no further request.

11 MR. TITLER: The Government has --

12 MR. ASEN: No further objections.

13 MR. GOLDBERG: None, your Honor.

14 MR. TITLER: The Government has one request,
15 your Honor. In marshalling the evidence, your Honor
16 called attention to the statements made by the
17 defendants to the Government agents in the case and
18 the portion dealing with voluntariness and whatnots.
19 I believe, your Honor, the record reflects on page 417
20 that during the course of the discussion with another
21 office, Officer Hunt, Benito informed the officer the
22 testimony:

23 "Question: What did the one who could speak
24 english say?

25 "Answer: He informed us he purchased the

1 counterfeit money in Harlem at 125th Street." Marked
2 in evidence, indeed there were three separate
3 admissions to Government agents which would come to
4 the scope of the voluntariness charge.

5 Your Honor, perhaps inadvertently omitted that
6 statement which is in evidence giving the jury the
7 impression that the only statements made were those
8 to Vezaris and Hast. Therefore, the Government --

9 THE COURT: I had missed that point. I didn't
10 get it in my notes. I thought I recalled something
11 of possible and incriminating nature that was said
12 to one of the police officers, but when I couldn't
13 find it I assumed it occurred in the suppression
14 hearing. Frankly, I don't think that the presence
15 or absence of that reference is that important. I
16 don't think I want to highlight the question by
17 giving a supplemental charge on it. I'm sorry I over-
18 looked it. I probably should have mentioned it to be
19 completely accurate, but it might be a little unfair
20 at this point to underscore it at this point.

21 Who do you gentlemen wish to strike? We have
22 to get rid of two jurors.

23 MR. ASEN: What is the procedure again?

24 THE COURT: The Government goes first.

25 MR. TEITLER: We are going to take off the

1 fellow, the young fellow in the back with the pipe,
7 2 the psychologist in this case.

3 MR. ASEN: I would have bet any amount on that
4 one.

5 MR. TEITLER: I just can't trust him. He's
6 number ten.

7 MR. GOLDBERG: Your Honor, the defense would
8 take off the tall gentleman in the back. I believe his
9 name is Callahan, is that right?

10 MR. ASEN: Probably, number nine.

11 THE CLERK: Is he sitting next to the young man?

12 MR. GOLDBERG: Back here or there (indicating).

13 THE COURT: Number 11. When they come in and
14 sit down, if it isn't, give me a high-sign. Number
15 11, Edward Callahan.

16 Bring the jury back in.

17 (Jury enters the courtroom)

18 THE COURT: You may recall, ladies and gentlemen,
19 that at the beginning of the trial I told you that
20 when we reach the end and before you retire to
21 deliberate, two of you would be designated as alternate
22 jurors. The alternate jurors in this case are juror
23 number 11, Edward Callahan and juror number 12,
24 Martin Brenman. You two gentlemen have won the honor
25 of being the alternate jurors and are spared the burden

1 or denied the privilege, however you may view it, of
8 2 participating in the jury deliberations and arriving
3 at a verdict.

4 In a few moments the jury will retire and
5 at that point you will be excused and I believe you
6 have completed your civic obligations for jury service
7 in Federal Court, at least for this round. You're
8 free to go home.

9 Would you swear the Marshal, please?

10 (The Marshal is sworn)

D-1

18 THE COURT: Well, I understand his argument and
19 you don't have to respond. With respect to that parti-
20 cular argument, as to Benito Nunez, I will overrule
21 your objection. Assuming, as the Government agent has
22 testified, that he made the statement, the fact that
23 it may be ambiguous, that it might be interpreted to
24 refer to a statement made by José to Benito in the car,
25 rather than based upon prior knowledge by Benito, this

13 1 is something which the jury is going to have to deter-
2 mine under all the circumstances of the case. The real
3 issue for me to decide is -- with respect to Benito, is
4 whether it was a voluntary statement, whether there was
5 any violation of the -- of Benito's Miranda rights. The
6 testimony on that point is virtually uncontested. I
7 find Agent Hast's testimony to be credible. No inher-
8 ent contradictions in it. There are no circumstances
9 here which rise to the level of an overbearing of
10 Benito's will. The interview which took place, even
11 though it was at the end of two or three hours of being
12 in custody, if you combine the New York City police
13 custody with the federal custody, the interview itself
14 was brief, 15 minutes or less I believe he had said.
15 Therefore, I deny the suppression motion with respect
16 to Benito. With respect to Jose, we similarly have a
17 short interview. We have testimony by the Government
18 agent that the Miranda warnings were given. We now have
19 testimony that Miranda warnings were given twice, that
20 on both occasions Jose acknowledge that he understood
21 them. There is no -- as with Benito, there are no
22 circumstances pertaining to Jose which rise to the
23 level of aforesaid confession or an overbearing of the
24 will. The real question is whether Jose in fact, under-
25 stood the warnings which were given to him. Did he

14 1 know what his rights were?

2 The defendant, Jose, acknowledges that he has
3 some understanding of English. He denies that he under-
4 stood any Miranda warnings that may have been given to
5 him. The Government agent Vezzeris testified that he
6 conversed with him over a period of somewhere between
7 ten and 20 minutes and he saw no indication that he
8 did not understand. It really comes down to a question
9 of whether I believe the Government agent or whether I
10 believe Jose.

11 On that question, I find that I believe the
12 Government agent. On several points I think Jose's
13 testimony is incredible. Mr. Teitler pointed out a
14 few of the examples in his final argument. In addition
15 to those points, Jose testified as to the first question
16 which was put to him in English by the agent and he
17 testified as to what his response was, in English. If
18 he had the ability to understand that question and give
19 that response in the English language, he certainly had
20 the ability to understand Miranda warnings which were
21 given to him twice.

22 Regardless of what color the man's hair was who
23 took his fingerprints, there are two conflicts in Jose's
24 testimony, which indicate to me that he's not being
25 truthful. One is that the first time he covered the

15 1 point he said it was before he was interviewed, and
2 the second time he covered it he said it was after he
3 was being interviewed. The conflict in my mind is
4 irreconcilable in view of the critical issue in this
5 case.

6 Further, there is the testimony of the agent
7 who says, he, himself, did the fingerprinting. I don't
8 believe Mr. Vezeris took the witness stand in this
9 case this morning for the sole purpose of testifying
10 to that fact and did it with the intention of lying to
11 the court. If it was Vezeris who did the fingerprint-
12 ing, it doesn't matter what the color of the hair was.
13 There is no way that Jose could have confused Vezeris,
14 the fingerprinter, with Vezeris, the interrogator.

15 In short, I find Jose's testimony incredible to
16 me. I find Vezeris's testimony to be credible. The
17 motion to suppress is denied.

18 With respect to the latter point which Mr. Asen
19 raised about the continuing nature of the interrogation
20 of presumption of improper interrogation by the New
21 York City police, and this carries over, I reject that
22 argument. First, there is no evidence to show what
23 the interrogation was by the New York City police.
24 Secondly, Mr. Ferry's testimony is that there was
25 virtually no questioning of the defendant from the time

16 1 from 10:00 o'clock when he arrived at the police sta-
2 tion until midnight or there -- or until he delivered
3 him at least to the Secret Service offices. The lapse
4 of time, the opportunity, the two defendants to con-
5 verse with each other, while they were being driven to
6 the Secret Service offices certainly would serve to
7 interrupt whatever tainted effect might have been
8 created, at least insofar as the record thus far shows.
9 There is no basis by which to connect the hypothetical
10 failure of the New York City police to give Miranda
11 warnings to the statements made in the Secret Service
12 offices in such a way as to require suppression of the
13 statements at that point.

14 Therefore, the motion or motions are in all
15 respects denied.

D-2

12 THE COURT: Accepting the rather unusual
13 procedures which were followed here as a further motion
14 to suppress, based upon the illegality of the arrest and
15 so-called fruit of the poisonous tree doctrine, I deny
16 that motion.

17 The circumstances demonstrated to my satisfaction
18 probable cause for the police to have initially stopped
19 the car. The absence of a bill of sale, certainly did
20 not make unreasonable the request by Detective Timko to
21 the defendants that they proceed to the stationhouse to
22 see if they could verify the information. The
23 uncontested testimony, the defendants agreed to that
24 procedure. There is no evidence they requested to go back
25 to verify it with Mr. Miller. There is no evidence that

1 they protested against it. There is no evidence that
2 any more than two of the detectives got out of the
3 car on the scene.

4 I do not see any overwhelming force. Once they
5 got back to the station house they had the information
6 from Mr. Miller. There is no question as to probable
7 cause for an arrest from what followed.

8 I found no illegality in the circumstances of
9 taking the defendants into custody, taking them to the
10 station house and subsequently arresting them by the
11 New York City Police Department.

12 With respect to the other aspect, as to the
13 re-opening of the hearing we had this morning, I have
14 heard nothing this afternoon which causes me to change
15 my overall evaluation of the credibility or lack of it
16 of the defendant Jose. While he made a statement that
17 he did not speak English too well, he made that state-
18 ment to Detective Hunt. He did converse with
19 Detective Hunt in English. Also, apparently with
20 Solomon. But more importantly, taking all of the
21 evidence into consideration, particularly the things
22 I cited in my decision this morning, and based upon the
23 entire record, I find the testimony of the Secret
24 Service agents is credible and that of Jose on the
25 question of whether or not he understood his Miranda

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rights, that his testimony is not credible; therefore,

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the notion is denied again.

(Pause)

THE COURT: All right, Mr. Teitler.

MR. TEITLER: Yes, your Honor.

THE COURT: Bring the jury in.

(Jury enters the courtroom.)

THE COURT: Ladies and gentlemen, we have now reached the point in the trial where all of the evidence has been presented to you.

The next stage is the final arguments of the attorneys. The procedure which we will follow is the Government attorney, Mr. Teitler, goes first, followed by the defense attorneys, and then the Government is permitted the opportunity for a brief rebuttal if Mr. Teitler chooses to exercise that privilege.

At that point we will recess for the day and then we'll go into the final stage prior to your deliberations, which is my instructions to you as to the law and how to go about reaching a verdict, which we will do tomorrow beginning at 10 o'clock.

Mr. Teitler?

MR. TEITLER: Ladies and gentlemen of the jury:

If you think back a few days ago, and perhaps it seems longer than we originally intended, you

1 remember that at the beginning of this trial I made
2 a promise to you. I said if you listen carefully
3 throughout the trial and pay attention to what the
4 Government's evidence was in this case and not be
5 sidetracked or shot off the road, I submitted to
6 you that we, the Government, will keep our promise.
7 The promise was to prove the Nunezes, Jose and
8 Benito Nunez, possessed counterfeit bills on
9 December 2, 1975, knowing that they were counter-
10 feit.

11 Well, the United States Judge, Judge Pratt,
12 will tell you what the elements of the crime in
13 this case are. I would like to review these
14 elements for you and go through some of the
15 evidence and I hope I will be perhaps a bit shorter
16 than the length of the trial in going through the
17 evidence, to see if I, as a representative of the
18 United States Government, met my burden in this
19 case.

20 Before I even do that, I want you to think
21 about the last witness, the last Government witness
22 who took the stand here. Mr. Perez, Who was Mr.
23 Perez? He was a citizen. He cared. He cared
24 about people. He's a police officer.

25 What happened to Perez on the stand?

Teitler-summation

What did the defense try to do to Perez?

They knocked him. They cross-examined him. How many questions were asked? A hundred? A hundred and fifty questions? It's a mockery of a man who came forward and did what at least we hope every citizen in this country would do. He came forward with information about a counterfeiter, two counterfeiters. That, I submit to you, is the same thing as the conduct of the defendants in connection with this case. They dealt, possessed counterfeit money with impunity. The same way they tried to attack a person up there (indicating), a kid, a twenty-year-old kid, who is an auxiliary policeman.

I ask you to bear that in mind throughout my summation, and what defense counsel have to say about this case. That's what this case is all about, possessing counterfeit money.

What is this whole business about counterfeit money? You remember these bills (indicating), and you have every right to take the money into the jury room later on, \$50s, \$20s. What's so important about this? Anybody get hurt? No.

You heard some question about muggings or other things? Nobody got hurt in this case. No

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Teitler-summation

guns, no violence.

What's so important about counterfeiting?
Ask yourselves, each of you on the jury, working
people, some of you now unemployed, some of
you are retired, ask yourselves what's money all
about in this system --

MR. ASEN: Objection.

MR. TEITLER: You get up in the morning.

MR. ASEN: Objection.

THE COURT: Mr. Teitler, there is an
objection.

The objection is overruled. I think it is
within the grounds of fair argument in the
issues of this case.

MR. TEITLER: You get up in the morning
at seven o'clock, go to work, earn money, pay for
your children's education, if you have children.
You worry about paying the landlord. You're
worrying about living in our society, a society
which was built upon the economics of the dollar
bill, not a phony dollar bill, a real dollar bill.

What is counterfeiting? It goes to the
heart of the very economic system that we all live
under. That's what this case is all about.

Teitler-summation

There's an old Biblical saying, "Who is the wealthy man? He's the one who is happy with his lot."

That's what the sages tell us.

Some people earn money, are satisfied in life. They work, they go through the trials and tribulations, the anxieties, the depressions of life, to support themselves and their family.

You worry about retirement, that you should have enough to live with, enough to buy food.

Other people aren't happy with that statement by our sages--

MR. ASEN: Objection. Side bar.

MR. TEITLER: Other people, ladies and gentlemen--

MR. ASEN: Objection.

THE COURT: Just a moment, Mr. Teitler.

You're requesting a side bar?

MR. ASEN: I won't state my objection out loud.

THE COURT: All right.

(Side bar)

THE COURT: Before you begin, I don't look kindly upon objections to summations; but proceed.

Teitler-summation

MR. ASEN: Ordinarily, I would not object except Mr. Teitler's tactic here is highly inflammatory. It bears no relation to the evidence of the case. These are not inferences that one can draw. These defendants are not on trial for counterfeiting. It's a counterfeit possession case.

MR. TEITLER: I'll clarify that, Judge.

MR. ASEN: I think what Mr. Teitler is doing is bringing in an inference so inflammatory at this point that if he persists in this way I will have to move for a mistrial again. It's the same argument.

MR. TEITLER: I'll straighten that out.

THE COURT: I do not consider anything that he has said, yet, to be inflammatory. It is somewhat strong, and I think Mr. Asen is correct. We are dealing with a possession case. Let's not get it cluttered up with ramifications of other areas where these defendants might or might not be involved that we have no knowledge of it based on this record.

MR. ASEN: Absolutely my point. Thank you.

MR. TEITLER: Fine.

(In open court)

Teitler-summation

MR. TEITLER: Yet, there are other people in our society who walk around with what appears to be money, pass it off on other people and intend to defraud them. That takes us into the elements of the crime here.

There are four elements.

1, that the defendants possessed the bills in question.

2, that the bills were in fact counterfeit,

3, that the defendants knew that the bills were counterfeit, and

4, that they intended to defraud persons.

Who was defrauded here?

Remember the testimony of Allen Miller?

What do we know about Allen Miller? Took the witness stand, eighteen years old today. A year ago he was seventeen. He's an insurance broker trainee. That's all he is. He testified that last year, almost a year -- this is one year anniversary of this case -- he was working for a company called Penn Shipping at \$84 a week as a clerk.

Well, the case began, as you remember with Exhibit 1 in evidence; the Buylines.

Miller, whose hobby is stereo, put an ad in

Teitler-summation

the Buylines to sell some equipment.

You remember he lived in a housing project, so testified. That was his hobby and he needed money, so he tried to sell his stereo equipment.

Where did Miller live? If you recall, he lived in Nostrand Avenue. He had a phone number at that time, and you will also recall that the phone number in that Buylines is not the phone number that was used to call him. In fact, the defendants on cross-examination tried to show that Allen Miller was incredible as a witness because, if you recall the testimony, they looked at the Buylines, saw the number and tried to give you the inference that how in the world would the Nunezes know his phone number at that time? Because it had been changed, but Miller quite quickly responded during cross-examination, "Well, the number was changed. The telephone company listed my new number. That's how they got ahold of me."

You'll also remember there was some testimony that Miller wasn't sure, but he thought maybe Jose Nunez had been to his house before with three people of Spanish origin. Wasn't positive. I don't think anybody in life is positive about

Teitler-summation

1
2 anything, but he remembered pretty much, so his
3 testimony went, that a fellow by the name of Jose
4 came there sometime in November, prior to December
5 2, 1975.

6 Well, it stands to reason that's how, if in
7 fact it was Jose, and the Government submits that
8 it was at that time, that's how the Nunezes knew
9 that stereo equipment was there and they knew that
10 maybe they could take advantage of a kid who was
11 seventeen years old.

12 Keep in mind what they did. They didn't
13 take the money to a bank. They didn't take the
14 money to a store keeper. They didn't take it to
15 anybody who would be so careful and would be on
16 notice every day of the week, "Is this money real?
17 Is it not real?"

18 How many times have you gone into a store
19 with a check or cash that's crisp, like this
20 (indicating). Maybe somebody is going to be very
21 careful about it. No, the Nunezes didn't do that.

22 They took it to Allen Miller, in his home.
23 A kid that I submit to you they figured was un-
24 sophisticated, didn't know anything. They could
25 get away with the crime.

Teitler-summation

Remember the telephone calls?

I ask you, is that the actions-- is that the type of conduct that each of you, an ordinary citizen, would have engaged in in this kind of deal?

He gets a call, Jose. Numbers went back and forth. He, Miller, asks Jose for the number.

Well, is that number real?

No, sir.

Remember Allen Miller tried to call the number back, and he was told no Jose lives here. No Joe, as Miller recalls Jose telling him who he was on the telephone.

Then another number was passed by this Joe. Anybody answers that phone by the name of Joe? No.

The first call was a woman who answered the phone. According to Allen Miller an elderly lady.

The second one, a kid answered the phone, no Joe.

Is that the conduct of people who don't know what they are doing? Is that the type of conduct that one who doesn't know anything about what he's doing with respect to phony money, counterfeit money, engages in?

Teitler-summation

Let's look at the transaction a little closer. After the phone calls Nunezes appear.

Remember Allen described his apartment and his Mom was there and you remember he testified his Mom was ill and they walked in, upstairs, looked at the stereo.

Remember how it all went about?

"Don't you want papers, Jose?"

"Don't you want papers Benito?"

"Don't you want a bill of sale?"

"Don't you want the instruction booklet?"

"No." Why not? Well, ask yourselves.

The reason is simple. Jose and Benito Nunez were in a rush to get out of there.

Remember Miller's testimony? About how they transacted business at his house? Remember Miller's words about, "I don't see how anybody who's spending \$500 could do what they did, not be interested at all in what was going on."

Sure, all they wanted to do was get rid of the \$500, and where was the \$500?

You remember. Here (indicating) It wasn't in the pants pocket. What was in the pants pocket? The real money.

Teitler-summation

Remember the conversation about the scanner?
They were interested in the scanner.

So Allen Miller said, "Well, it's 65 bucks."
Only had 40 bucks.

Where did the 40 bucks come from?

The pants pocket. Not straight money,
but folded money.

What was up here (indicating)? \$500 in
straight new phony money.

Are those the actions of people who can
come here in this courtroom, before the bar of
justice, and tell you they didn't know that the
money was counterfeit? They didn't possess the
money? They didn't know what was going on?
The money was won somewhere up in a bolita game?
We will talk about that in a few minutes.

We will scrutinize the transaction. Where
did the money come from?

Jose took this money out of his pocket. It
was Miller's testimony. He gave it to Benito.
Benito counted the money. After Benito counted the
money, they handed it to Allen Miller.

One element to the crime. Possession.

Did the defendants possess the money in question?

Teitler-summation

or can there be any question about it in your minds?

There can't be. It was uncontradicted testimony at the trial that Jose and Benito possessed the money with Allen Miller. It's one element.

During the course of the conversation, Allen Miller, he asked them, "Where did you get this money?"

The answer, "Oh, I got it --

"How come it's so crisp?"

"I got it from a bank."

Well, I submit to you this "I got it from a bank," what's the purpose of the defense here? Remember the expert witness put on the witness stand by Jose? Bolita. That's the difference. Jose.

I submit to you based upon the facts in this case that's absurd. They took a statement about a bank and are creating a whole defense in this case by Jose.

I submit to you that after you consider the evidence you'll determine that that defense is incredible. In fact, it's so incredible it's ludicrous.

Remember when Jose and Benito went down to the apartment and they were carrying this

Teitler-summation

1
2 equipment-- By the way, you recall this is only
3 one piece of the stereo equipment. Mr. Miller
4 testified that there were a few others. One was
5 broken. One he gave to a friend; but they were
6 carrying some equipment and do you remember
7 Allen Miller testified, "I want to help you."

8 In fact, he asked them twice, "Can I help
9 you?"

10 They got down to the door, Benito and Jose.
11 They don't want any help.

12 Ask yourselves why-- their car was parked
13 outside-- they didn't want Allen Miller to walk
14 out the door and look to see the car. Maybe--
15 ask yourselves -- Allen Miller might see the license
16 plate on the car.

17 They were very cautious about how they went
18 about purchasing the stereo equipment. So cautious,
19 ladies and gentlemen of the jury, that I submit to
20 you that the evidence in this case is overwhelming;
21 that they're criminals of the first order, possess-
22 ing counterfeit money.

23 Remember Allen Miller? About how excited
24 he was over the money? Remember he testified that
25 there was a move, "and my mom's television set

Teitler-summation

1
2 was broken," and he was going to take the money
3 to buy his mother a new television set. How
4 excited he was when he saw \$500 in front of him,
5 because he never saw that kind of money in his
6 life?

7 So what did he do? He counted it in his
8 room and then for a couple of minutes he just
9 forgot about it, took the stereo equipment down.
10 The Nunezes left. Miller came upstairs.

11 What did he do? He put his hands on the
12 money and laid it out on the table. His mom was
13 happy and he was happy because he had money to buy
14 his mom a new television set and he looked at it,
15 like each of you will be able to do at the end of
16 this case. It didn't feel right.

17 Sure it doesn't feel right. It's not the
18 kind of paper, not a Crane paper, not the kind of
19 paper the expert testified to was involved in real
20 money.

21 He looked at it and each of you will look
22 at it. You take a look at this stuff and you
23 line it up. It's fantastic. All of the serial
24 numbers are the same, at least on certain of the
25 bills.

Teitler-summation

What did he do? He felt it, looked at it. He wasn't as stupid as the Nunezes thought he would be. You heard him testify. I don't think anybody on the jury could argue that he was not a fairly intelligent boy.

I submit to you that this case -- it's filled with coincidences. Unbeknownst to the Nunezes -- they thought they got away with the perfect crime. No one could see their license plate. Never in a million years -- by the time they were gone, how could they be traced? How could they be traced when they gave Miller phony numbers?

Could Allen Miller call them back and say, "Benito and Jose, give me my money back. You ripped me off"?

He couldn't do that. Jose and Benito knew that.

Unbeknownst to them, who is sitting outside but Detective Hunt and Detective Timko and some other people.

Well, criminals never think, I submit, that they're going to get caught. I think I made some bare mention about this during the course of the opening statement.

Teitler-summation

1
2 When they went outside -- and you remember
3 the testimony of Detective Timko, who testified
4 this was a high burglary area, high crime area
5 for burglary.

6 What did they do? They saw the Nunezes
7 putting the stereo in the car. They got suspicious
8 and there was a lot of business at this trial,
9 the defense tried to inject the fact about race
10 or whatever, that this was ninety-five percent
11 white area, etc., etc.

12 Well, ask yourselves what happened. Police
13 officers sitting there in a high crime area, see
14 people loading stereo equipment into a car. What
15 do they do?

16 The best kind of police conduct possible.
17 I don't think we could have asked for finer con-
18 duct. They followed the car. They stopped the car
19 and they asked questions.

20 "Where's your bill of sale?"

21 The Nunezes were too busy trying to get
22 out of Miller's house than to get a bill of sale.
23 That wasn't important to them but that came back
24 to haunt them.

25 When they didn't have the bill of sale and

Teitler-summation

they couldn't produce any proof that they owned the stereo equipment.

They tried to do better. They said, "Well, gee, we just bought this equipment, from Allen Miller. Call Miller. He'll tell you."

They had nothing to be afraid of. They did buy it from Allen Miller. They figured once Allen Miller was contacted they would go Scot free. Goodbye.

Yes, the Nunezes thought nobody is as smart as they are.

Remember what happened? The police said, "O.K.," and if you recall the testimony of Detective Timko and Hunt, the Nunezes had no objection to going down to the 61 Precinct, and you recall the discussion, all the questioning was in English.

Sure, they thought, come on, let's go down to the precinct. We got it made.

What was going on at that time? The clock ticked a bit. Allen Miller was up in his apartment looking at the bills. Picks up the telephone.

After he sees all the numbers are the same on some

of them and he feels it, of them and he feels it, and he gets on the tele-

Teitler-summation

1
2 phone and who does he call? Not the Secret Service.
3 How do you expect the fellow to know about the
4 Secret Service? He calls the FBI. Logical place
5 to call. We all know about the FBI. The FBI
6 puts him in touch with the United States Secret
7 Service.

8 Well, another coincidence. As he is on
9 the telephone with the United States Secret Service,
10 Detective Timko, who is checking out this story of
11 the Nunezes, is on the other line. Remember Miller
12 testified that he had this little box? One signal
13 clicked the other and he was able to take two
14 calls.

15 Timko says, "We got these two guys down
16 here and they claim they bought stereo. Did they
17 buy stereo equipment from you?"

18 Allen said, "Yes, they certainly did.
19 They did one thing too. They passed counterfeit
20 money with this stereo."

21 Up until that point in time, you remember the
22 testimony, there was no arrest. The defendants
23 weren't-- Oh, yes, they were under suspicion.
24 Thank goodness for the suspicion of the New York
25 City Police. They were under suspicion, but now

Teitler-summation

there came a little more than a suspicion.

The New York City police arrested Jose and Benito Nunez. The United States Secret Service came down, were taken into custody by the United States Secret Service.

Well, one thing I ask you to remember and that's if you recall Detective Timko was the one who transported the defendants to the 61 Precinct.

There was a conversation in that car in English. That's another thing. All of the conversations in this case were in English, except for one time when one of the defendants who has the interpreter here said to Officer Hunt, "I don't speak English."

When you say to a police officer, "I don't speak English," that doesn't mean the police officer says he cannot speak English.

What did the police officer do? He said, "Ask your other defendant" -- rather, he asked the other defendant to translate. You remember the personal history statements came out, all that.

The conversation in the car, with Detective

Timko, English. The conversation with Allen

He did Miller, English. He did a pretty good job in English.

Teitler-summation

1
2 This is the man who sits before you with an
3 interpreter, a man who cannot understand English,
4 but a man who can defraud Allen Miller and talk
5 a blue streak, I submit to you, when he wants to.

6 To talk his way out of a crime, he can do
7 it. "I got it from Allen Miller."

8 Here we are at the police station. Personal
9 history statement. You know, there's another
10 coincidence in this case, which I don't want to
11 slip my mind. That has to do with the fact where
12 does Benito Nunez get involved with the "informant"
13 in this case? At a program subsidized -- a loan
14 of \$1500, made by the United States Government.

15 He goes and takes a program, takes \$1500
16 from the United States Government to learn how
17 to learn the ins and outs of counterfeiting and here
18 he stands, charged by the United States Government
19 for that crime.

20 Takes the Government's money to learn how
21 to commit crimes against the Government.

22 A lot of ironies in this case.

23 Well, let's see where we are here.

24 You heard the testimony of Detectives Timko

and Hunt. 25 there any and Hunt. Is there any reason in the world -- you

Teitler-summation

remember that lengthy cross-examination, what was going on up here?

Cross-examination as to this, that? The Government established it was done, what happened, what was said.

The defendants tried to pull the wool over your eyes by asking you a million questions as to the same thing with the Secret Service, with the surveillance.

I submit to you it's a joke. Questions about lighting and this and that, all to try to get your eyes off of the focus in this case, whether the defendants committed the crimes charged in the indictment in this case.

Once the Secret Service picked up the defendants, usually the agents involved here, Agent Vezeris, Agent Vezeris had a conversation with one of the defendants.

By the way, I'm looking at the record in this case. This is what the court reporter has transcribed here throughout the past number of

days. Should any of you have any questions,

I believe the United States Judge, Judge Pratt,

will tell you you have the right to call back and

Teitler-summation

1
2 have the testimony read to you since yours is the
3 recollection that controls.

4 Agent Vezeris was around about 11:30 at
5 night and he testified that Doug Farahety, the
6 case agent here, made the arrest along with another
7 agent in this case. There was an interview with
8 Jose. The interview was in English, and here's
9 what Jose had to say.

10 Agent Vizeris testified at page 489, "I asked
11 him" -- that is Jose, "specifically about the
12 notes that he had been arrested for earlier that
13 day. I asked him firstly if he knew they were
14 counterfeit when he passed the notes. He said he
15 did know they were counterfeit. I asked him if
16 he had passed the notes to this Mr. Miller as pay-
17 ment for the stereo equipment. He stated that he
18 did.

19 "I then questioned him about the origin of
20 the notes, and he told me that he had received the
21 notes from a black male in the area of 125th Street
22 and Lenox Avenue the Saturday prior to his arrest.

23 "The questions centered around the identity of
24 this black male. He couldn't provide any more
25 specific information. He would not provide any

Teitler-summation

other information other than that I just told you."

Agent Vezeris is testifying as to what Jose said out of Jose's own mouth. It's out of Jose's mouth where Jose stated to Vezeris that he knew the bills were counterfeit, and he comes here today and throughout the past number of days arguing, through cross-examination, that he didn't know anything.

What else did Agent Vezeris testify to?

Vezeris observed Jose at the restaurant and I might tell you, ladies and gentlemen, like Judge Pratt will tell you, the crimes being charged here are possession of the \$500 of counterfeit bills. That's the charge in the indictment; however, the Government has proven, we submit, and certainly it's up to you as the fact finders, to determine whether we have or have not proven what is known as prior similar acts regarding either one defendant, Jose or the other defendant, Benito.

The Court will also tell you that the Government proves these things not to prove or to give you the inference that because an act was committed on one day it follows that the act charged in the indictment was committed. That is not the purpose

Teitler-summation

1
2 of the evidence, and I ask you to keep that in
3 mind when you consider this case in the jury room.

4 The purpose of the evidence is not to show
5 that the defendants had bad character, because
6 they have bad character then they're no good here.
7 That's not it at all.

8 The purpose of the proof is to show that
9 because the defendants engaged in certain similar
10 activities on prior or subsequent occasions, that
11 bears on the question of whether or not they knew
12 what they were doing here. It bears on their
13 intent. It bears on their motive, and we submit
14 that it goes to prove that there was a plan, a
15 scheme, a common design, to deal, possess counter-
16 feit currency. That's the purpose of the Govern-
17 ment's proof with regard -- You recall there was
18 an incident November 19, October 22. There was
19 other proof in this case and that proof is limited,
20 strictly, for that purpose, to prove two defendants
21 guilty of the charges in the indictment.

22 Well, Vezeris testified, if you recall, that
23 he observed Jose at the Compana Restaurant on 88th
24 Street and Amsterdam Avenue. He was on surveillance
25 at that time.

Teitler-summation

Jose didn't talk, but Vezeris saw Benito and Jose.

You remember on November 19th Agent Vezeris testified as a surveilling agent, as one who corroborates and who adds further proof to the testimony of "the informant," in this case, or the other evidence in this case that what one witness says happened did in fact happen because this is additional evidence to prove it.

Agent Vezeris on November 19th saw Jose and Benito and the informant up there at the restaurant, the same restaurant that we heard testimony about was the front for Jose, Benito Nunez with the obligations.

You remember I asked Agent Vezeris what 40 points is. He explained it means 40 out of 100. If you're dealing with \$100 in counterfeit money and you want to buy at 40 points, you make \$40 instead of \$100.

Agent Vezeris also testified about his conversation with one of the defendants, Jose. He

was calm during the course of the questioning, said

he understood. No problem with English. That was

it with respect to Jose.

Teitler-summation

Now, see if you recall his testimony.

"Question: Will you please be kind enough to tell the members of the jury and the Court exactly what you said to Benito and what he said to you."

This, if you recall is Agent Hast's testimony with respect to his interview with Benito.

"This interview took place several days more than a year ago. I'm not challenging these are exact quotes, but I asked him if he knew that the money that was passed in the purchase of a stereo, for a stereo, was counterfeit.

"He said he did.

"I asked him how the transaction took place.

"He said that his cousin, Jose, had given the counterfeit money to Allen Miller.

"I asked him where Jose had obtained the money."

That is Benito's statement to Secret Service Agent Hast. That, as his Honor will tell you, is an admission. It's the defendant's own verbal account of what he knew in his head and indeed, it's very difficult to prove what's in a man's head.

One of the ways we're doing it in this case

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Teitler-summation

is to show you what the defendants themselves said about the crime charged, and we have introduced prior similar acts to prove to you that because of the transactions on prior occasions, because of their existence, if you believe they existed and if you believe the charges here are true, you may so use them; that they knew exactly what they were doing.

Agent Hast, Agent Vezeris, you heard them on the witness stand. You heard lengthy cross-examination of both of them. Did they lie? Did they have any reason in the world to lie?

Would they prove through cross-examination to be liars? Perhaps, like each of us, there were mistakes. There could have been -- when time was recounted, it was 6:15 or 6:20 or 6:18. Sure, we're all human. We're all frail. None of us can remember exactly what happened, today, yesterday, the day before or last year.

I submit to you in substance, and even the agents themselves said, "I can't tell you the exact words."

Benito and Jose both told agents of the

government that they knew the money was counterfeit. In fact, Agent Hast testified Benito was calm,

Teitler-summation

understood his rights.

You remember there was one point in time when he was being cross-examined by one of the defense counsel, and it was brought up that Hast said something about a storekeeper, and then on redirect that was -- that was only half the picture. On redirect I asked Agent Hast, "Isn't it" -- "Were you asked this question and did you give this answer," and I showed you throughout the course of the prior proceeding in this case Agent Hast had made an error, but had corrected it under oath later on because he said, "Oh, yes. My memory is refreshed.

"He didn't say he gave the money to a storekeeper; he said he gave the money to Allen Miller."

The defendants tried to give you one side of the picture and we brought out the other.

Agent McCool, remember, a lot of cross-examination about who was there on December 2, 1975. Well, who was there? Agent McCool was an undercover agent present at that time, and who did he deal with? He dealt with Benito.

Benito agreed and there was talk about

selling a \$3,000 package of counterfeit money, but

Teitler-summation

it was too late to deal.

Why was it too late to deal? Did we get any explanation of that during the course of the trial? Sure we did. We got an explanation.

The testimony of Mr. Perez. The claim that they're innocent wrongdoers. They're innocent of the charge. Yes, they're innocent.

They told Perez, "We only deal with our kind." Remember, "our kind." Spanish. Remember he said, "No blacks. No other kinds." It's in the testimony.

Well, Agent McCool is not Spanish. They wouldn't deal with him. They said it was too late.

Remember McCool testified, "I offered to pay for the samples." It's all here. I'm trying to cut things short. I'm not pulling out the particular pages of the testimony. He wouldn't deal with McCool. McCool offered to pay for the three samples. Wouldn't take the money.

Why wouldn't they take the money? Ask yourselves. Money passes. If it's somebody he can't trust, maybe a bust would go down. Once money passes, then the Government, I submit, if you

ask yourselves really have something to argue.

Teitler-summation

1
2 If you just talk about it and you don't
3 pay one another and all that can't come into court,
4 another thing. Smart. Jose and Benito, one of
5 them can't speak English. Smart? You better
6 believe smart. So smart, but not so smart,
7 I believe, to outsmart each of you on the jury.

8 McCool. And where was Jose during the
9 course of McCool's -- Jose was standing by.

10 Is it fair to say he was a lookout?

11 Ask yourselves what Jose was doing outside
12 of the restaurant up there.

13 Remember he was in there for a while, then
14 he was outside, looking around. Ask yourselves,
15 Jose Nunez had nothing to do with this case?

16 Mr. Perez testified that he got some samples
17 in this case. Here are the samples. Government
18 Exhibit 4, \$50, \$20, \$10, (indicating). Where did
19 he get it from? Jose. Jose. Nothing to do.

20 Benito says, "Here's Jose, my man." What
21 does that mean, "my man"? Ask yourselves. Think
22 about that. What does that really mean, "my man"?

23 Keep in mind, ladies and gentlemen, we're
24 dealing here with possession of counterfeit bills.

25 So, it was too late to deal. That was it. McCool

Teitler-summation

offered to pay the money; Benito didn't want to take the money. Remember all that cross-examination? The length of it, about who was there? Well, Pat McCool was there. Mr. Perez was there. Remember all that nonsense about lights and this and that and how many pages that went on for?

Is there any question in your minds, ladies and gentlemen, that Jose and Benito were there? Could the Government have produced any better evidence than we did? Putting and showing you surveillance agents and the informer who was there and special Agent McCool who was in an undercover capacity?

Do you believe the defense, who will conceivably argue this whole thing is fabricated or some argument or bolita is involved here?

I'll come to another element, that the bills were in fact counterfeit. Chart. This chart is in evidence. The agent came down from Washington, D.C. He testified that all of those bills are counterfeit and he testified about one interesting thing. The master negative, remember Judge Pratt asked the expert, "What is a master negative?"

and there was some discussion on it? The money passed on December 2 is from the money passed

Teitler-summation

1
2 same negative as all the other money in this case,
3 the October 22 money, the November 19th money.

4 Who had this money, the samples? Jose and
5 Benito will tell you they don't know at this time.
6 Scientific proof to show you all this money is
7 from the same source. Same negative.

8 What about the business of -- there was
9 testimony that the defendants both claimed -- and
10 they were in separate rooms -- they purchased from
11 a black man in Harlem.

12 You remember from the course of the agents'
13 testimony here, they wanted to know the source.
14 I just read that to you, the source. Who is the
15 guy making the plates? That's what they were after
16 during the time of the arrest in this case, the
17 discussions of Benito and Jose.

18 They weren't focusing in a hundred percent
19 on this. They wanted to know where are the plates
20 being made, here, Kennedy Airport, Brooklyn, Queens?

21 We want to know. Once they heard that an
22 unidentified man up in Manhattan, Harlem, was the
23 person they knew, I submit to you, that as far as

24 that was concerned, Benito and Jose lied.

25 is he a Ramoncita Perez, is he a Ramoncita Perez, is he a liar, an informant,

Teitler-summation

1
2 a no-good person? Is he a mad human being? Does
3 he have any reason to gain anything by his testimony?

4 The boy has been interested in police work
5 since he's seven years old, virtually all his life.
6 He came across Benito in a counterfitting class,
7 another little tidbit of coincidence.

8 Sure, Benito knew about counterfitting.
9 I submit to you he probably knew -- well, the
10 Federal Government, he was taking the Federal
11 Government loan to learn about counterfitting.
12 This is a non-knowledgeable person.

13 Mr. Perez, never got a dime for his testimony
14 at all, though my able adversary will tell you,
15 "Oh, this fellow is a policeman. He has such" --
16 remember the cross-examination on motive? Spent
17 an hour on motive. An hour.

18 Remember Mr. Goldberg's question, something
19 about the community could be served, that is God
20 going to be served? Remember that? Laughed at him.
21 That's what they did, and who gets up there as one
22 of the defense witnesses but a policeman. Who

23 gets up there to stand up? They laugh at him
24 when it comes time to prove the Government's case,
25 but who did Mr. Asen put on the witness stand but a

Teitler-summation

police officer?

Sure, when it suits you to, do it one way.

If it doesn't suit you do it the other way.

That's an insult to an intelligent person.

(Continued on the next page.)

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Teitler-summation

2 MR. TEITLER: (Continuing) Benito is in the
3 class. He was learning how to identify counterfeit
4 bills.

5 Do you remember the testimony - all in the
6 record -- they met in the bathroom. Benito took him
7 in the bathroom and said at that time, I told him, I
8 looked at the bills and I said I was interested. I
9 asked him do you know how -- what could he do -- how
10 does he get the bills colored in. Benito tells me he
11 passes them through coffee or with tea and he hangs it
12 up and dries it. I told him -- this is Mr. Perez --
13 how much could he get and he said he could get \$15,000,
14 \$30,000, just as much as I wanted.

15 In other words, he was telling how how to make
16 counterfeit bills look old by passing it through tea,
17 dropping it into tea.

18 And then Perez asked Benito if he could see
19 the money. Benito said I will bring him a sample --
20 and I will give you one so you pass it on for me.
21 So does the counterfeit money pass in the bathroom?
22 No. The Nunezes do not touch counterfeit money.

23 There is no deal here unless it is one of their own.

24 And they got to be pretty sure. Well, let me ask you,

25 Mr. Perez is Spanish. He told you he is of Spanish

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2 origin. He told you so from the witness stand. He
3 is one of their own.

4 The defense is going to try to make you believe
5 that Mr. Perez, and indeed they did during cross-
6 examination before Mr. Perez took the stand -- there
7 was a question asked of one of the agents:

8 Was Mr. Perez ever arrested? There was all
9 sorts of business about access to money in New York,
10 the theory being, I submit to you, that it was
11 Mr. Perez that was the counterfeiter.

12 During the course of the summation by defense
13 counsel that is what they are going to tell you,
14 Mr. Perez instigated everything; Mr. Perez is a
15 criminal. Ladies and gentlemen, you heard Mr. Perez.
16 Some criminal. What did he have to gain? He never
17 got paid a dime. He is not a paid informant. He
18 never committed any crime. I asked him were you
19 ever arrested? Were you ever convicted? He never
20 knew that he was coming to this Courthouse until
21 the United States Attorney's Office served him with
22 a subpoena.

23 Now, I'm going to ask yourselves why would you
24 think that he had anything to gain? What is it,
25 something to gain to stand up in front of the jury and

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2 tell lies to people? He did what he did out of the
3 bottom of his heart because he believed about service
4 to his community. You heard him testify to that
5 three, four, five times. He was never paid by the
6 Secret Service. He was never paid by the United
7 States Attorney. Never in his wildest dreams did he
8 believe he was going to be here, but he was here.
9 And I spoke to him.

10 Who did you speak to? You heard the witness.
11 He discussed the case in the United States Attorney's
12 Office -- today is Wednesday -- first had time to
13 discuss the case Monday of this week in preparation
14 for trial. I submit to you there is nothing wrong
15 with that.

16 Then came the sample. Do you remember there
17 was a \$50 bill, counterfeit bill, Government's
18 Exhibit 3. Here is the sample that Benito gave
19 Mr. Perez (indicating). You take a look at it in the
20 jury room. It has the initials "JV", John Vezeris
21 on the back, October 22, 1975. Benito gave it in the
22 hopes that Perez could pass it off. Let me know how
23 it is, Perez. Let me know if it works. I got more
24 where this is coming from, 15,000, 30,000; you name
25 it, Perez.

Well, October 22, 1975, the sample was turned over to Mr. Perez with the statement, quote "This is yours." Vezeris was called. And remember Benito said,

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2 don't touch the bill. Benito said keep in contact
3 with me. Then there was a November 19th meeting.
4 Then at the November 19th meeting Benito said, "This
5 is my man Jose." Jose pulled out the three sample
6 counterfeit notes and gave them over to Mr. Perez.
7 Jose gave these notes over.

8 And you will recall that the Judge told you
9 about a certain stipulation with respect to Agent
10 McCool, because Agent McCool for various reasons
11 cannot be here, the Government has stipulated with
12 defense counsel that Mr. McCool's report be shown to
13 you and be marked in evidence. And in fact you will
14 see that in his report -- and I ask you to look at
15 it carefully -- the defense will claim that Agent
16 McCool said that the money was passed by Benito Nunez.
17 At least that is what Mr. Asen will claim to you.
18 If you read the report carefully it says "Nunez" in
19 the second paragraph. And it doesn't say Benito or
20 Jose. Whatever, ladies and gentlemen -- Mr. Perez
21 was on the stand -- and whatever Mr. McCool wrote
22 down in his report, it is just Mr. McCool writing it
23 down. He is not available here to be cross-examined
24 on it. And we have no problem on that. If it was
25 a mistake, fine. But the witness was on the stand,

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2 Mr. Perez, and he told you where the money came from
3 and who in fact turned it over.

4 They were in contact. Mr. Benito said to stay
5 in contact. Keep in touch.

6 There was discussion about the \$3,000 of
7 counterfeit bills at 40 points, if you recall.

8 Then came the day in question, December 2,
9 1975. And who was there?

10 Jose.

11 Who was there?

12 Benito.

13 At about 6 o'clock Special Agent McCool walked
14 in. Do you remember the agent's testimony as to
15 what happened on that day? Benito went outside. Jose
16 followed. Benny did not want to deal with Special
17 Agent McCool, but he would get money later on that
18 evening. And you will also recall that there was a
19 payment by -- Benito was paid a \$50 sample by
20 Mr. Perez.

21 Well, there is a lot of cross-examination in
22 this case. There was a lot of cross-examination by
23 Mr. Asen and Mr. Goldberg with respect to Mr. Perez.

24 Nothing, or virtually nothing did they cross-examine

25 him on that had to do with this case. It all had to do with

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2 do with what they were trying to show, I submit, was
3 the psychology of that boy on the witness stand. They
4 are trying to show you that this is unusual conduct,
5 that because he is interested in police affairs alone,
6 and he is trying to make a career for himself -- what
7 was he trying to show you -- he trumped up the whole
8 story. What else could their position be. That is
9 all they did for one hour in this Courtroom.

10 Did they question him as to the substance,
11 as to the merits of this case? No, not at all. In
12 fact I submit that is what they did with the rest of
13 the witnesses here.

14 Admissions in the case by Jose and Benito?
15 There was corroboration in the case. Plenty. Agent
16 Hast, who was on surveillance, and Vezzeris. Similar
17 acts -- prior similar acts to show knowledge -- what
18 we consider to be certainly a sufficient amount of
19 evidence, an overwhelming amount of evidence to
20 convict these defendants beyond a reasonable doubt.
21 Possession? No question about it. Knew that the
22 bills were counterfeit? They admitted on the day
23 in question that they knew the bills were counterfeit.
24 In fact, the bills were counterfeit? The expert
25 testified. That they intended to defraud Allen Miller?

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2 No question about it. That was their intent and I
3 showed you step by step how they did it and what
4 they wanted to do.

5 On the day in question, December 2, 1975, the
6 Allen Miller transaction, I submit that that testimony
7 alone with respect to Allen Miller and what they said
8 to the agents would be enough to convict. There is
9 no question about it. But the Government has produced
10 more evidence at this trial, overwhelming evidence at
11 this trial. We brought for your scrutiny Mr. Perez
12 was present at all these prior times of possession
13 of counterfeit bills. He was there. We brought in
14 all the similar acts. What more evidence the
15 United States Government could have produced at this
16 trial, I do not know. I submit to you that there is
17 none.

18 Ladies and gentlemen, I told you at the outset
19 it is an important case for the Government. It is
20 an important case for the defendants. It is important
21 that a just verdict be brought back in this case. You
22 saw the witnesses. You will judge their credibility.

23 You will listen to defense arguments. I ask

24 at least you to remember at least one thing, the Government
25 produced evidence at this trial, and plenty of it.

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2 The defense is going to produce arguments,
3 hypotheses and speculations.

4 We have the burden of proving each of the
5 defendants guilty beyond a reasonable doubt. And I
6 submit to you we have met that burden in all respects,
7 in an overwhelming manner in this case.

8 I ask you to do one more thing. I ask you on
9 behalf of the United States to bring in a verdict
10 of guilty in this case so that notice will go out to
11 the world to whomever that counterfeit money and
12 possession of counterfeit money will not be tolerated
13 in this country at any time. And by your verdict
14 in this case I am confident sufficient notice will go
15 forth so that those who act like the Nunezes did
16 with impunity will be stopped and others will be
17 prevented from breaking at the very jugular of our
18 economy -- dealing with phony counterfeit bills and
19 fraudulent securities of the United States.

20 I thank you for your attention throughout the
21 course of this trial.

CERTIFICATE OF SERVICE

May 13, 1977

I hereby certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Eastern District of New York.

James Lloyd Barnett